

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

TERRY PETTEWAY, THE
HONORABLE DERRECK ROSE,
MICHAEL MONTEZ, SONNY
JAMES and PENNY POPE,

Plaintiffs,

v.

GALVESTON COUNTY, TEXAS,
and HONORABLE MARK HENRY,
in his official capacity as Galveston
County Judge,

Defendants.

Civil Action No. 3:22-cv-57

UNITED STATES OF AMERICA,

Plaintiff,

v.

GALVESTON COUNTY, TEXAS,
GALVESTON COUNTY
COMMISSIONERS COURT, and
HONORABLE MARK HENRY, in
his official capacity as Galveston
County Judge,

Defendants.

Civil Action No. 3:22-cv-93

DICKINSON BAY AREA BRANCH
NAACP, GALVESTON BRANCH
NAACP, MAINLAND BRANCH
NAACP, GALVESTON LULAC
COUNCIL 151, EDNA COURVILLE,
JOE A. COMPIAN, and LEON
PHILLIPS,

Civil Action No. 3:22-cv-117

	§
<i>Plaintiffs,</i>	§
	§
v.	§
	§
GALVESTON COUNTY, TEXAS,	§
HONORABLE MARK HENRY, in	§
his official capacity as Galveston	§
County Judge, and DWIGHT D.	§
SULLIVAN, in his official capacity as	§
Galveston County Clerk	§
	§
<i>Defendants.</i>	§

**DEFENDANTS’ MOTION FOR AN EXTENSION OF
THE APRIL 28, 2023 DISPOSITIVE MOTIONS DEADLINE AND
REQUEST FOR AN EXPEDITED RULING**

Defendants Galveston County, Texas, the Galveston County Commissioners Court, County Judge Mark Henry, and County Clerk Dwight Sullivan (“Defendants”) respectfully move the Court to extend the time for the parties to file their Motions for Summary Judgment, currently set for Friday, April 28, 2023. Specifically, Defendants seek to extend the deadline to **one week after the last deposition is taken or June 2, 2023, whichever date is earlier.**

Discovery is ongoing and has been reasonably extended in this case due to circumstances beyond the control of any party. Although Plaintiffs have indicated that they could agree to an extension of the dispositive motions to May 12, 2023 or one week after the last deposition is taken, whichever is earlier, Plaintiffs object to Defendants’ request.

1. Pursuant to Federal Rule of Civil Procedure 56(b), parties have up to 30 days after the close of discovery for the filing of a Motion for Summary Judgment, unless a local rule or the court orders a different deadline.
2. On July 15, 2022, the Court issued a Docket Control Order instructing that all

dispositive motions be filed by April 28, 2023 (seven days after the close of discovery). *See* ECF 66.

3. The Docket Control Order also set a docket call for June 9, 2023. ECF 66.
4. On a joint motion of the parties, however, the Court subsequently established August 7, 2023 as the date certain for trial to begin in this case. ECF 117.
5. The parties have conducted extensive discovery to date, but a substantial amount of discovery remains to be done. Particularly, there are pending privilege issues under consideration by Magistrate Judge Edison. ECF 102 and 103; *see also* ECF 104 (referring Plaintiffs' Motions to Compel Discovery to Magistrate Judge Edison).
6. Additionally, the parties have not yet completed deposition discovery. On the parties' agreement and the Court's permission, several depositions of key fact and expert witnesses will be taken after discovery closed on April 21, 2023. *See, e.g.*, ECF 133 and 134.
 - a. For example, due to scheduling conflicts, Professor Alford is unable to sit for a deposition until April 27, 2023 (one day before the current deadline for dispositive motions).
 - b. Additionally, a witness's family emergency prompted the parties to reschedule the deposition of Plaintiff Dickinson Branch NAACP to Wednesday, April 26, 2023.
 - c. Commissioner Holmes' deposition has also been postponed until after his documents are produced and any privilege dispute concerning them is resolved (Commissioner Holmes' counsel has agreed to provide a privilege log to

Defense counsel early this week).

- d. The parties have also agreed to postpone the depositions of Thomas Bryan and Dalton Oldham Jr. until the Court has issued a ruling on Plaintiffs' Motions to Compel Discovery. ECF 102 and 103; *see also* ECF 104 (referring Plaintiffs' Motions to Compel Discovery to Magistrate Judge Edison).
 - e. Finally, depending on the Court's ruling on the Plaintiffs' Motions to Compel Discovery, the depositions of Judge Henry, Commissioner Giusti, Commissioner Apffel, and Nathan Sigler may be reopened.
 - f. The testimony from the delayed depositions is potentially probative and important to the issues that will be raised on summary judgment.
7. This means that four depositions are pending as of this filing, with a potential for an additional five depositions—nine total—that are dependent on the Court's ruling on Plaintiffs' Motions to Compel. ECF 102 and 103.
 8. The operative Docket Control Order setting the dispositive motions deadline on April 28, 2023 does not take into account these outstanding discovery issues. Therefore, Defendants request that the Court set a new dispositive motions deadline to one week after the last deposition is taken or June 2, 2023, whichever date is earlier.
 9. Defendants have conferred with each of the Plaintiffs in this consolidated action.
 - a. Counsel for the NAACP Plaintiffs has indicated that they object to the relief sought in this Motion.
 - b. Earlier today, Defendants requested that counsel for the United States state their position on the relief requested in this Motion. Defendants have not received a

response from counsel for the United States and it is therefore believed that counsel for the United States object to the relief requested.

- c. Earlier today, Defendants requested that counsel for the Petteway Plaintiffs state their position on the relief requested in this Motion. Defendants have not received a response from counsel for the Petteway Plaintiffs and it is therefore believed that counsel for the Petteway Plaintiffs object to the relief requested.

10. Plaintiffs have instead suggested that the deadline to file for summary judgment be within one week of the last deposition or May 12, 2023, whichever is earlier. Plaintiffs have also suggested that the remaining deadlines on the Docket Control Order be adjusted. *See* Ex. A.

11. However, given the number of depositions remaining, Defendants believe that discovery will not be completed by May 12, 2023.

WHEREFORE, Defendants respectfully request that the Court extend the time for the parties to file their Motions for Summary Judgment from April 28, 2023 to one week after the last deposition is taken or June 2, 2023, whichever is earlier.

DATE: April 25, 2023

HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC

By: /s/ Dallin B. Holt

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on April 25, 2023, a true and correct copy of the foregoing was served via email upon all counsel of record.

/s/ Dallin B. Holt
Dallin B. Holt

CERTIFICATE OF CONFERENCE

On April 24, 2023 and April 25, 2023, undersigned counsel communicated by electronic mail with counsel for the Parties concerning the relief requested in this Motion. (Ex. A). On behalf of all Plaintiffs, Ms. Sarah Chen, represented that Plaintiffs could agree to an extension of the summary judgment deadline along with other amendments to the Docket Control Order. Plaintiffs, however, proposed the dispositive motions deadline be moved to one week after the final deposition is taken or May 12, 2023, whichever date is earlier. Ms. Chen, on behalf of the NAACP Plaintiffs, objected to the relief sought in this Motion.

/s/ Shawn T. Sheehy
Shawn T. Sheehy